

Application No. 10/811,606  
Amendment dated May 20, 2008  
Reply to Office Action of February 21, 2008

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### REMARKS/ARGUMENTS

Applicant has reviewed and considered the Office Action mailed on February 21, 2008, and the references cited therewith.

Claims 1, 10, and 16 are amended, claims 5, 9, 11, 12, and 20 are canceled, and no claims are added; as a result, claims 1-4, 6-8, 10, and 13-19 are now pending in this application.

Applicant submits that the amendments to claims 1, 10, and 16 do not introduce any new subject matter and support for the amendments can be found in, besides other places, Figures 2-7.

### § 102 Rejection of the Claims

Claims 1-4, 10 and 16 were rejected under 35 USC §102(b) as being anticipated by Bisgaard (U.S. Patent No. 4,984,277). Applicant has amended to more clearly recite the claimed subject matter. In so far as the rejection applies to claims 1, 10, and 16, as amended, Applicant respectfully traverses the rejection and addresses the rejection as follows.

Applicant respectfully submits that Bisgaard does not teach all the elements recited in claims 1, 10, and 16, as amended. For example, Bisgaard does not appear to teach a customizable cerumen guard that includes:

- a hollow, cylindrical insert...including:
  - an inside surface of the insert defining a chamber adapted to directly receive a cerumen-trapping accessory,
  - an ear canal aperture adapted to communicate with the ear of a wearer, where the insert includes a surface surrounding the ear canal aperture defining a ridge, and
  - a receiver aperture adapted to communicate with the receiver tube; and
- a plurality of customizable caps each having an inner-cap surface to engage the ridge of the insert to releasably attach one of the customizable caps with the insert and a central opening in communication with a number of peripheral openings, where the peripheral openings further include a cerumen-spreading device positioned in the peripheral openings.

as recited in claims 1 and 16, as amended.

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Also, independent claim 10, as amended, recites:

a hollow, cylindrical insert adapted to be permanently mounted into the shell aperture with adhesive, the insert including:

an inside surface of the insert defining a chamber, where a wax coil is positioned in the chamber,

an ear canal aperture adapted to communicate with the ear of a wearer, where the insert includes a surface surrounding the ear canal aperture defining a ridge, and

a receiver aperture adapted to communicate with the receiver tube; and

a plurality of customizable caps each having an inner-cap surface to engage the ridge of the insert to releasably attach one of the customizable caps with the insert and a central opening in communication with a number of peripheral openings, where the peripheral openings further include a cerumen-spreading device positioned in the peripheral openings.

The Office Action states Bisgaard has a tube (5) that is substantially similar to the insert from claim 1, 10, and 16 because they are both cylindrical and hollow to allow for the reception of cerumen-trapping accessories. (Office Action, page 4).

Bisgaard appears to teach a filter that can be attached to tube 5 (Col. 4, lines 40-60). The filter in Bisgaard does not include a chamber with a wax coil positioned in a chamber. Nor does the filter in Bisgaard include a central opening and a number of peripheral openings, where the peripheral openings further include a cerumen-spreading device positioned in the peripheral openings. The filter in Bisgaard is positioned on the free end of the tube 5 (Col. 4, lines 49-52) and is a one-piece plastic part that is used to filter with a masking part that prevents cerumen from directly penetrating the openings in the filter (Col. 4, lines 61-68).

However, Bisgaard does not appear to teach an insert with "an inside surface of the insert defining a chamber, where a wax coil is positioned in the chamber", as recited in claim 10, as amended. Rather, Bisgaard appears to describe a tube that has a one-piece plastic filter placed on the end of the tube without a cerumen-trapping accessory in the tube or a cerumen-spreading accessory in the filter. The one piece filter in Bisgaard also does not appear to teach "a plurality of customizable caps each having an inner-cap surface to engage the ridge of the insert

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to releasably attach one of the customizable caps with the insert and a central opening in communication with a number of peripheral openings, where the peripheral openings further include a cerumen-spreading device positioned in the peripheral openings", as recited in claims 1, 10, and 16, as amended.

Based on the forgoing, Applicant respectfully submits that Bisgaard does not contain each and every element and limitation of independent claims 1, 10, and 16, as amended. As such, Applicant respectfully submits that Bisgaard does not support a 102(b) rejection of claims 1, 10, and 16. Applicant respectfully requests reconsideration and withdrawal of the 102(b) rejection for independent claims 1, 10, and 16, as well as those claims that depend therefrom.

§103 Rejection of the Claims

Claims 6, 12 and 17 were rejected under 35 USC § 103(a) as being unpatentable over Bisgaard (U.S. Patent No. 4,984,277) in view of Carbe (U.S. Patent No. 5,278,360). Applicant respectfully traverses the rejections as follows.

Claim 6, 12, and 17 are dependent on independent claims 1, 10, and 16, respectively, which are in condition for allowance for at least the reasons stated above. That is, Bisgaard does not teach each and every element contained in Applicant's independent claims 1, 10, and 16. The Carbe reference does not cure the deficiencies of Bisgaard. Although, Carbe appears to teach a filter that is placed in a passage (Col. 3, lines 36-45), Carbe does not appear to teach a wax coil is positioned in a chamber nor a customizable cap with a number of peripheral openings, where the peripheral openings have a cerumen-spreading device positioned in the peripheral openings. For example, Carbe does not describe, teach, or suggest, independently or in combination with Bisgaard, a hollow, cylindrical insert with an inside surface of the insert defining a chamber, where a wax coil is positioned in the chamber, an ear canal aperture adapted to communicate with the ear of a wearer, where the insert includes a surface surrounding the ear canal aperture defining a ridge, and a receiver aperture adapted to communicate with the receiver tube, as recited in claim 10, as amended.

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Also, Carbe does not describe, teach, or suggest, independently or in combination with Bisgaard, a plurality of customizable caps each having an inner-cap surface to engage the ridge of the insert to releasably attach one of the customizable caps with the insert and a central opening in communication with a number of peripheral openings, where the peripheral openings further include a cerumen-spreading device positioned in the peripheral openings, as provided in claims 1, 10, and 16, as amended.

As such, Applicant respectfully submits that each and every element and limitation of independent claims 1, 10, and 16 as amended are not taught or suggested by Bisgaard and Carbe, either individually or in combination. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the 103(a) rejection of dependent claims 6, 12, and 17.

Claims 7, 9, 13, 15, 18 and 20 were rejected under 35 USC § 103(a) as being unpatentable over Bisgaard (U.S. Patent No. 4,984,277) in view of Haertl (U.S. Patent No. 4,987,597). Applicant respectfully traverses the rejections as follows.

Claim 7 and 9 depend from independent claim 1, claims 13 and 15 depend from independent claim 10, and claims 18 and 20 depend from independent claim 16. Independent claims 1, 10, and 16 are in condition for allowance for at least the reasons stated above. That is, Bisgaard does not teach each and every element contained in Applicant's independent claims 1, 10, and 16. The Haertl reference does not cure the deficiencies of Bisgaard. For example, Haertl does not describe, teach, or suggest, independently or in combination with Bisgaard, a hollow, cylindrical insert with an inside surface of the insert defining a chamber, where a wax coil is positioned in the chamber, an ear canal aperture adapted to communicate with the ear of a wearer, where the insert includes a surface surrounding the ear canal aperture defining a ridge, and a receiver aperture adapted to communicate with the receiver tube, as recited in claim 10, as amended.

Also, Haertl does not describe, teach, or suggest, independently or in combination with Bisgaard, a plurality of customizable caps each having an inner-

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cap surface to engage the ridge of the insert to releasably attach one of the customizable caps with the insert and a central opening in communication with a number of peripheral openings, where the peripheral openings further include a cerumen-spreading device positioned in the peripheral openings, as provided in claims 1, 10, and 16, as amended.

As such, Applicant respectfully submits that each and every element and limitation of claims 7, 9, 13, 15, 18 and 20 are not taught or suggested by Bisgaard and Haertl, either individually or in combination. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the 103(a) rejection of claims 7, 9, 13, 15, 18 and 20.

Claims 8, 14 and 19 were rejected under 35 USC § 103(a) as being unpatentable over Bisgaard (U.S. Patent No. 4,984,277) in view of Haertl (U.S. Patent No. 4,987,597), and further in view of Carbe (U.S. Patent No. 5,278,360). Applicant respectfully traverses the rejections as follows.

Claim 8, 14, and 19 are dependent on independent claims 1, 10, and 16, respectively, which are in condition for allowance for at least the reasons stated above. That is, Bisgaard does not teach each and every element contained in Applicant's independent claims 1, 10, and 16. Neither Haertl nor Carbe cure the deficiencies of Bisgaard. For example, Haertl and Carbe do not describe, teach, or suggest, independently or in combination with Bisgaard, a hollow, cylindrical insert with an inside surface of the insert defining a chamber, where a wax coil is positioned in the chamber, an ear canal aperture adapted to communicate with the ear of a wearer, where the insert includes a surface surrounding the ear canal aperture defining a ridge, and a receiver aperture adapted to communicate with the receiver tube, as recited in claim 10, as amended.

Also, Haertl and Carbe do not describe, teach, or suggest, independently or in combination with Bisgaard, a plurality of customizable caps each having an inner-cap surface to engage the ridge of the insert to releasably attach one of the customizable caps with the insert and a central opening in communication with a

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number of peripheral openings, where the peripheral openings further include a cerumen-spreading device positioned in the peripheral openings, as provided in claims 1, 10, and 16, as amended.

As such, Applicant respectfully submits that each and every element and limitation of claims 8, 14, and 19 are not taught or suggested by Bisgaard, Carbe, and Haertl, either individually or in combination. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the 103(a) rejection of claims 8, 14, and 19.

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CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 236-0120 to facilitate prosecution of this matter.

CERTIFICATE UNDER 37 C.F.R. §1.8: The undersigned hereby certifies that this correspondence is being transmitted to the United States Patent Office facsimile number (571) 273-8300 on

May 20, 2008

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